
Introduced by Senator Battin

February 21, 2003

An act to amend Section 1793.02 of the Civil Code, relating to assistive devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 648, as introduced, Battin. Assistive devices.

Existing law permits the buyer of an assistive device, as defined, to return that device to the seller for an adjustment, replacement, or refund, at no charge, if within the specified warranty period.

This bill would permit the seller of an assistive device to charge the buyer a nominal fee for any readjustment of that device during the warranty period. The bill would require the written warranty that accompanies the sale of an assistive device to inform the buyer that a nominal fee may be charged for readjustments during the warranty period.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1793.02 of the Civil Code is amended
2 to read:
3 1793.02. (a) All new and used assistive devices sold at retail
4 in this state shall be accompanied by the retail seller's written
5 warranty which shall contain the following language: "This
6 assistive device is warranted to be specifically fit for the particular
7 needs of you, the buyer. If the device is not specifically fit for your
8 particular needs, it may be returned to the seller within 30 days of



1 the date of actual receipt by you or completion of fitting by the
2 seller, whichever occurs later. If you return the device, the seller
3 will either adjust, *for a nominal fee at the discretion of the seller*;
4 or replace the device or promptly refund the total amount paid.
5 This warranty does not affect the protections and remedies you
6 have under other laws.” In lieu of the words “30 days” the retail
7 seller may specify any longer period.

8 (b) The language prescribed in subdivision (a) shall appear on
9 the first page of the warranty in at least 10-point bold type. The
10 warranty shall be delivered to the buyer at the time of the sale of
11 the device.

12 (c) If the buyer returns the device within the period specified
13 in the written warranty, the seller shall, ~~without charge and~~ within
14 a reasonable time, adjust the device, *for a nominal fee at the*
15 *discretion of the seller*; or, if appropriate, replace it with a device
16 that is specifically fit for the particular needs of the buyer. If the
17 seller does not adjust or replace the device so that it is specifically
18 fit for the particular needs of the buyer, the seller shall promptly
19 refund to the buyer the total amount paid, the transaction shall be
20 deemed rescinded, and the seller shall promptly return to the buyer
21 all payments and any assistive device or other consideration
22 exchanged as part of the transaction and shall promptly cancel or
23 cause to be canceled all contracts, instruments, and security
24 agreements executed by the buyer in connection with the sale.
25 ~~When~~ If a sale is rescinded under this section, no charge, penalty,
26 or other fee may be imposed in connection with the purchase,
27 fitting, financing, or return of the device, *except any fee imposed*
28 *for readjustment*.

29 (d) With respect to the retail sale of an assistive device to an
30 individual, organization, or agency known by the seller to be
31 purchasing for the ultimate user of the device, this section and
32 subdivision (b) of Section 1792.2 shall be construed to require that
33 the device be specifically fit for the particular needs of the ultimate
34 user.

35 (e) This section and subdivision (b) of Section 1792.2 ~~shall do~~
36 not apply to any of the following sales of assistive devices:

37 (1) A catalog or similar sale, as defined in subdivision (q) of
38 Section 1791, except a sale of a hearing aid.

39 (2) A sale which involves a retail sale price of less than fifteen
40 dollars (\$15).

1 (3) A surgical implant performed by a physician and surgeon,
2 or a restoration or dental prosthesis provided by a dentist.

3 (f) The rights and remedies of the buyer under this section and
4 subdivision (b) of Section 1792.2 are not subject to waiver under
5 Section 1792.3. The rights and remedies of the buyer under this
6 section and subdivision (b) of Section 1792.2 are cumulative, and
7 ~~shall~~ may not be construed to affect the obligations of the retail
8 seller or any other party or to supplant the rights or remedies of the
9 buyer under any other section of this chapter or under any other
10 law or instrument.

11 (g) Section 1795.5 ~~shall~~ does not apply to a sale of used
12 assistive devices, and for the purposes of the Song-Beverly
13 Consumer Warranty Act the buyer of a used assistive device ~~shall~~
14 ~~have~~ has the same rights and remedies as the buyer of a new
15 assistive device.

16 (h) The language in subdivision (a) shall not constitute an
17 express warranty for purposes of Sections 1793.2 and 1793.3.

